

Decision 03-01-059 January 30, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of dba PHUC NGUYEN HUU CALIFORNIA EXPRESS XE DO CALI, to Operate An On-Call, Inter-City, Passenger Stage and Baggage Express Service Between Points Orange, Los Angeles and Santa Clara Counties, Described in the Body of the Application, Pursuant to Section 1031, *et. seq.*, of the California Public Utilities Code (Pub. Util. Code), on the One Hand, and To Establish a Zone of Rate Freedom Under Section 454.2, *et seq.*, of the Pub. Util. Code, on the Other Hand.

Application 01-07-020
(Filed July 18, 2001)

O P I N I O N

Summary

This decision grants the application of Phuc Nguyen Huu California Express Xe Do Cali (Applicant) to operate an on-call, inter-city, passenger stage and baggage express service between points in Orange, Los Angeles and Santa Clara counties. MotorSTATION CORP., a transportation consultant, filed a protest. That protest is denied. Xe Do Hoang Transportation, LLC. (Xe Do Hoang) filed an “objection.” That “objection” is also denied.

Application

Applicant seeks authority under Section 1031, *et. seq.*, of the Pub. Util. Code, to establish and operate an on call “inter-city” passenger stage and “baggage express” service between points in Orange and Los Angeles Counties, on the one hand, and points in Santa Clara County, on the other hand.

Applicant also seeks to establish a Zone-of-Rate-Freedom (ZORF) of plus-or-minus (+\$12) over its proposed fares and charges, under Pub. Util. Code § 454.2, *et. seq.* because it will be operating in competition with other carriers and other forms of transportation of predominantly Vietnamese or Chinese ownership. The specific Service Areas and Routes are described in Section III of the Application. Applicant does not seek or wish to provide intra-city service.

Applicant states that his proposed customers are predominantly Vietnamese or Chinese speaking members of the public traveling between communities in Southern California and the San Jose Area. The target clientele does not wish to travel as a group or travel by a regularly scheduled bus service, but still needs an affordable, dependable and good quality transportation service between the Cities of Los Angeles, San Gabriel, Westminster and the City of San Jose and return.

Applicant proposes to perform an on-call, inter-city service on a seven (7) days per week basis, with trips starting between the hours of 10:00 am and 5:30 pm. Applicant states that he plans to transport passengers between Orange and Los Angeles Counties on the one hand and Santa Clara County on the other hand.

Applicant estimates that one (1) 25-passenger bus and one (1) 15-passenger van will be adequate to start operations. Each bus and/or van will operate one (1) one-way trip per day. Additional equipment will be acquired as needed. Applicant states that all buses will be fully automatic, air-conditioned, fully insured and will meet or exceed all safety requirements.

Applicant attached a copy of the proposed fare schedule to this application as Exhibit A.

Procedural Background

Notice of the application appeared in the Commission's Daily Calendar on July 23, 2001. On August 2, 2001, the Commission issued Resolution ALJ 176-3068 in which it preliminarily categorized the proceeding as ratesetting and found no hearing was necessary. On August 16, 2001 Xe Do Hoang Transportation, LLC. filed an "objection" to the Application. MotorSTATION CORP. filed a protest on August 22, 2001. Applicant states that he was not served with the protest or the "objection." On October 3, 2002, the applicant filed a motion to accept a late-filed reply to the protest and to the "objection." On October 11, 2002, the assigned Administrative Law Judge (ALJ) issued a ruling accepting the late-filed reply.

Rates and Charges

Applicant's proposed rates and charges are shown in Exhibit A to this application.

Route Descriptions

Applicant will provide transportation of passengers and baggage express on an on-call basis between the cities of San Gabriel and San Jose, making intermediate stops at the cities of Westminster and Los Angeles and return.

Insurance and Other Requirements

Applicant states that he has obtained a Common Carrier of Passenger certificate from the U. S. Department of Transportation (MC-410459), a USDOT identification number (USDOT 969309), a certificate of liability insurance, has passed a California Highway Patrol terminal inspection, has enrolled in the Department of Motor Vehicle driver Pull Notice program, and has enrolled in an approved random drug and alcohol testing program. Applicant provided copies of these documents with his reply to the protest and to the objection.

Applicant's Financial Statement

Applicants attached as Exhibit C to the application the balance sheet for year ended 2000 and Exhibit D, a pro-forma income statement as of mid-year 2001. Exhibit C shows total assets of \$96,000. Exhibit D shows gross revenues of \$80,000 and a net profit of \$10,960.

Objection

Xe Do Hoang filed an objection, which we shall consider as a protest. In its protest, Xe Do Hoang cited five (5) objections to the application:

Issue No. 1

The applicant has failed to file an application in the form required by the Commission, (Pub. Util. Code § 1032(a)). MotionSTATION also complained about the form of the application.

Discussion

Applicant used a sample application provided by Commission staff as a format for the Passenger Stage Application, which complies with the Commission's filing requirements.

Issue No. 2

Applicant has failed to forward a copy of the application to each public transport operator. (Pub. Util. Code § 1032(a)).

Discussion

At the time of filing, applicant served, by mail, copies of the application to a list of known public transport operators. Notice of the application was listed in the Commission's Daily Calendar. The applicant has substantially complied with our service requirements.

Issue No. 4

Applicant has failed to show that the current certificate holder/operator in the territory will not provide service to the satisfaction of the Commission. (Pub. Util. Code § 1032(b).)

Issue No. 5

The issuance of a certificate to the applicant shall have an adverse effect upon the current certificate holder in the territory. (Pub. Util. Code § 1032 (c).)

Issue No. 6

There is insufficient public demand for such a service within the territory to support two such certificate holders.

Discussion of Issues 4, 5, and 6

The major issue among the five issues delineated by Xe Do Hoang is the issue of competition in a territory in which Xe Do Hoang states it is already serving. We note that both the incumbent and the applicant generally serve or wish to now service customers between San Jose and Los Angeles and Orange Counties. However, the applicant proposes to originate service from San Gabriel in Los Angeles County with stops in the cities of Los Angeles and Westminster. On the other hand, the incumbent, Xe Do Hoang originates his service in Santa Ana (in Orange County) with stops also in the cities of Los Angeles and Westminster. We note too that applicant states that he intends to offer service to the Chinese Community as well as the Vietnamese Community.

We addressed this issue of passenger stage competition in Decision (D.) 99-10-068, *mimeo.*, p.3-4 where we stated: “For many years the Commission has pursued a policy of promoting competition in passenger stage carrier markets. In furtherance of this policy, the Commission has liberally construed statutory and regulatory requirements in reviewing applications for new and

expanded services. It has nevertheless required that carriers demonstrate the financial capability to support proposed ventures.”

In this case we have before us applicant’s Exhibits C and D, his balance sheet and pro-forma income statement. We believe that a net worth of \$86,000 and a pro-forma profit of \$10,960 will provide a sufficient operating ratio to provide an adequate return to the applicant in order to support his proposed service.

Protest

MotorSTATION CORP. lists seven (7) reasons for its protest, 6 of which deal with the allegation that applicant plagiarized one of his proprietary designs for a passenger stage service application, specifically Xe Do Hoang Transportation, the incumbent carrier, who filed the “objection.”

MotorSTATION also alleges that applicant is unfit to provide the proposed service “as he has been operating as a passenger stage without Commission license for over a year now: and still operating in competition with Protestant’s properly licensed client.”

Discussion of MotorSTATION CORP.’s Protest

As we noted in our discussion of Issue 1., above, applicant used a sample provided by the Commission staff as a guide for preparing his application. We see no harm in providing sample applications as they are available to the general public from our file room. We note the similarity between applicant’s filing and that made by the incumbent as applicant proposes to provide similar, but not as we have noted, identical service.

As to allegation that applicant has been providing service without a license, Protestant provides nothing to support this statement. Applicant denies the allegations.

We deny the protests, and grant the application.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner, and Dean Evans is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Applicant proposes to offer on-call passenger and baggage express bus and van service between Los Angeles and Orange Counties and Santa Clara County, specifically originating in San Gabriel with stops in Los Angeles and Westminster terminating in the city of San Jose and return.
2. Applicant will operate in a competitive environment and require the ability to change fares in response to that competition within certain parameters.
3. Applicant currently possesses the necessary licenses and insurance to conduct operations between Orange and Los Angeles Counties in the south and Santa Clara County in the north.
4. Applicants' pro-forma operations for the mid-year 2001 and balance sheet show financial fitness.
5. Applicant's proposed route map, Exhibit B to the application needs to be corrected to show the City of Westminster and the City of San Gabriel.

6. Applicant requests authority to establish a ZORF and the proposed rates and charges as shown in Exhibit A, attached to the application.

7. The Commission has a policy of pursuing competition in passenger stage carrier markets.

8. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

9. The application complies with the Commission's filing requirements.

10. The applicant has substantially complied with the Commission's service requirements.

11. There is no evidence that the applicant is unfit to conduct the proposed operation.

Conclusions of Law

1. Applicant is not currently licensed by this Commission.

2. Applicant has demonstrated that this proposed service is in the public interest.

3. Applicant should be granted a certificate of public convenience as requested.

4. The protests should be denied.

5. The request for a ZORF and the proposed rates should be granted.

6. Before applicant changes any fares under the ZORF authorized below, applicants shall give this Commission at least 10 days' notice. The filing of ZORF fares should be shown in the tariff showing between each pair of service points the high and low ends of the ZORF and the then currently effective fare.

O R D E R

IT IS ORDERED that:

1. The certificate of public convenience and necessity (CPCN) granted to Phuc Nguyen Huu (Applicant), authorizing him to operate as a passenger stage corporation (PSC), as defined in Pub. Util. Code § 226, to transport persons and their baggage, and express, between the points and over the routes set forth in Appendix PSC subject to the conditions contained in the following paragraphs.

2. Applicant shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
- c. File tariffs and a corrected route map on or after the effective date of this order. They shall become effective ten days or more after the effective date of this order, provided that the Commission and the public are given not less than ten days' notice.
- d. Comply with General Orders (GO) Series 101 and 158, and the California Highway Patrol (CHP) safety rules.
- e. Comply with the controlled substance and alcohol testing certification program pursuant to Pub. Util. Code § 1032.1 and General Order Series 158.
- f. Continue to maintain accounting records in conformity with the Uniform System of Accounts.
- g. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 423 when notified by mail to do so.
- h. Comply with Pub. Util. Code §§ 460.7 and 1043, relating to the Workers' Compensation laws of this state.

- i. Enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code.
3. Applicant is authorized under Pub. Util. Code § 454.2 to establish a zone of rate freedom (ZORF) of \$12 below and above any of the proposed fares of \$40. The minimum fare one-way adult fare is \$40.
4. Applicant shall file a ZORF tariff in accordance with the application on not less than ten days' notice to the Commission and to the public. The ZORF shall expire unless exercised within 120 days after the effective date of this order.
5. Applicant may make changes within the ZORF by filing amended tariffs on not less than ten days' notice to the Commission and to the public. The tariff shall include between each pair of service points the authorized maximum and minimum fares and the fare to be charged.
6. In addition to posting and filing tariffs, Applicant shall post notices explaining fare changes in his terminals and passenger-carrying vehicles. Such notices shall be posted at least ten days before the effective date of the fare changes and shall remain posted for at least 30 days.
7. Applicant is authorized to begin operations on the date that the Consumer Protection and Safety Division mails a notice to Applicant that his evidence of insurance and other documents required by Ordering Paragraph 2 have been filed with the Commission and that the CHP has approved the use of Applicant's vehicles for service.
8. Before beginning service to any airport, Applicant shall notify the airport's governing body. Applicant shall not operate into or on airport property unless such operations are authorized by the airport's governing body.
9. The CPCN to operate as PSC-14493, granted herein, expires unless exercised within 120 days after the effective date of this order.

10. The protest of MotorSTATION CORP. and the objection of Xe Do Hoang Transportation, LLC are denied.

11. The Application is granted as set forth above.

This order is effective today.

Dated January 30, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Appendix PSC-14493
(an individual)

Phuc Nguyen Huu

Original Title Page

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION
PSC-14493

Showing passenger stage operative rights, restrictions,
limitations, exceptions, and privileges

All changes and amendments as authorized by
the Public Utilities Commission of the State of California
will be made as revised pages or added original pages.

I N D E X

	Page
SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS	2
SECTION II. SERVICE AREAS.....	3
SECTION III. ROUTE DESCRIPTION.....	3

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS,
LIMITATIONS, AND SPECIFICATIONS.

Phuc Nguyen Huu, an individual, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to transport passengers, their baggage, and express, on an "on-call" basis, between points and places as described in Section II, and over and along the route described in Section III, subject however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- A. When a route description is given in one direction, it applies to operation in either direction unless otherwise indicated.
- B. The term "on-call," as used, refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs shall show the conditions under which each authorized on-call service will be provided, and shall include the description of the boundary of each fare zone, except when a single fare is charged to all points within a single incorporated city.
- C. No passengers and express baggage or package shall be transported except those having a point of origin or destination as described in Section IIB.
- D. Express service shall be restricted to baggage or package not exceeding one hundred pounds.

SECTION II. SERVICE AREA.

- A. Points and places in the cities of Westminster, San Gabriel, and Los Angeles.
- B. Points and places in San Jose City.

SECTION III. ROUTE DESCRIPTION.

Commencing from any point as described in Section IIA, then over the most convenient streets, expressways, and highways to San Jose.